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FM AMEMBASSY PHNOM PENH

TO RUEHC/SECSTATE WASHDC IMMEDIATE 1483

INFO RUCNASE/ASEAN MEMBER COLLECTIVE PRIORITY

RUEHBS/AMEMBASSY BRUSSELS PRIORITY 0127

RUEHFR/AMEMBASSY PARIS PRIORITY 0731

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UNCLAS SECTION 01 OF 02 PHNOM PENH 000949

SENSITIVE

SIPDIS

STATE FOR EAP/MLS, DRL, P, D

E.O. 12958: N/A

TAGS: [PGOV](#) [PHUM](#) [KJUS](#) [PREL](#) [CB](#)

SUBJECT: AS NOOSE TIGHTENS, OUTSPOKEN SAM RAINSY TO SEND  
LAWYER TO ANSWER SUMMONS

REF: PHNOM PENH 847

SENSITIVE BUT UNCLASSIFIED. NOT FOR INTERNET DISSEMINATION.

**¶1. (SBU) SUMMARY:** The lawyer for opposition party leader Sam Rainsy said that Rainsy will not return from France to answer a summons from the Svay Rieng province investigating judge in connection with a case related to a Cambodia-Vietnam border demarcation incident on October 25. The summons states Rainsy is to be questioned on charges of breaking temporary border posts and inciting racial/national hatred. Rainsy has lashed out at the Svay Rieng "kangaroo court" and continues to attempt to assume full responsibility for the alleged destruction of temporary border markers during a publicity stunt to highlight the sensitive border demarcation process. Cambodian authorities are responding to official Vietnamese claims of interference in the border's demarcation. While the Sam Rainsy Party is content to exploit their own brand of anti-Vietnamese nationalism in counterpoint to the Hun Sen government's virulent anti-Thai sentiments, there is no apparent exit strategy from the court case for Rainsy, whom Hun Sen condemned for supporting the Thai, adding that Rainsy would have to serve out at least two thirds of any jail sentence handed down. END SUMMARY.

Handling of the Ongoing Investigation

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**¶2. (SBU)** Attorney Chou Chhun Ngy told us December 18 that Rainsy has asked the lawyer to go in his place to answer the summons for questioning on the two counts. The summons explicitly states that if Rainsy does not appear on December 28, an arrest warrant will be issued for Rainsy's official escort to the questioning by Svay Rieng investigating judge Long Kesphyrum. Rainsy's parliamentary immunity was lifted on November 16 to accommodate this legal process (Ref A). Rainsy's lawyer also will travel to Svay Rieng early next week to submit a list of witnesses he wants the investigating judge to interview. (NOTE: We understand that one of these witnesses will assert that Rainsy himself did not pull out any of the rough wooden stakes marking an underground cement border marker, although Rainsy can clearly be seen in YouTube videos cheering on those who did. END NOTE.) On the charge of racial incitement, Rainsy's use of the virulent racial slur "Yuon" against the "invading" Vietnamese will be more difficult to address, as evidenced by the silence by most Rainsy activists on this point or the rationale given that the slur has long been in use.

Rainsy's Logic of Martyrdom

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**¶3. (SBU)** Rainsy early on denied that he was involved in the October 25 removal of temporary border markers (four of which

are currently being held in local Svay Rieng farmers' houses and two of which were moved by SRP activists to Phnom Penh, according to SRP sources), or alternatively argued that the rough-hewn, tree-branch stakes were of no financial value and meaningless. The undisturbed cement post in the ground underneath these stakes is indeed the official physical basis for the bilateral border marker, as confirmed by Senior Minister Var Kim Hong, Chairman of the RGC Joint Border Committee (JBC). Since mid-November, however, Rainsy has claimed to be the symbolic defender against "encroachment" and -- despite the facts -- now claims that he himself removed the stakes. This should be considered an act in defense of the nation and the peoples' land, Rainsy has argued, not a crime.

#### SRP Joins in the Game

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¶4. (SBU) With the exception of two others, all Sam Rainsy parliamentarians descended on the Svay Rieng border marker site on December 14 to view the situation, to reaffirm that the cement pole in the ground (about 10 inches in diameter) remained there, and to reiterate the SRP's concern for the eastern border even as the RGC focused on the western border with Thailand. Although there was a scuffle with about 100 police attempting to block the way, the event came off "quite okay", according to SRP MP Son Chhay, who said the police leadership intervened at least twice to instruct rank-and-file security forces not to harm anyone and parliamentarians were able to do their duty to inspect the site.

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¶5. (SBU) Son Chhay said that the SRP has now called for an explanation of the border demarcation process in the National Assembly and that Deputy Prime Minister Sok An will appear before a full session of parliament on December 24 to answer a long list of questions regarding the border posed by SRP.

#### A Few Hitches in the SRP Plan

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¶6. (SBU) Son Chhay noted to Pol/Econ Chief that he believed that the RGC Land Law applied to all land adjacent to the demarcated border, which could remain private land. However, post recently obtained an RGC document dated 2000 that indicates there is a "border area" under the exclusive administration of the JBC and which could not be subject to private ownership. (NOTE: Thus allowing for negotiation and demarcation with neighboring countries. END NOTE.) Son Chhay also correctly pointed out that there is no law or regulation in Cambodia stating how far from the border people had the right to own private land. However, the JBC reportedly uses the limit of one kilometer to define the "border area", according to Var Kim Hong. Given this definition, all of the "encroached" land being defended by the SRP would be well within the RGC's purview and Rainsy would have no legal defense in the position that it was halting trespass on private land.

#### COMMENT:

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¶7. (SBU) With a number of other witnesses being called by the Svay Rieng border incident case, we can expect the provincial court to increase its public relations on the Rainsy case, now that the summons has been issued. The next major decision point will be with the onset of a trial, assuming the investigating judge finds credence in the two charges. Putting aside the charge of "breaking" the border posts (destruction of public property), Rainsy may not so easily defend against inciting discrimination based on race or nationality. The potential minimum jail time is at least one year for either charge, even if Rainsy is found to be only an accomplice. Some in SRP claim the government will

seek the much stiffer penalty of five years. Rainsy is doing nothing to calm the waters from his Paris venue, where he lashes out at the government and attracts opposition funding.

If Hun Sen sticks by his recent fit of pique not to pardon Rainsy until Rainsy has served two thirds of his sentence, the opposition may well have to readjust its leadership calibrations.

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